

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHNNY JONES,

Plaintiff

v.

JERRY HOWELL,

Defendant

Case No. 2:20-cv-01326-APG-BNW

ORDER

I. DISCUSSION

On July 17, 2020, Plaintiff, an inmate in the custody of the Nevada Department of Corrections ("NDOC"), submitted a civil rights complaint under 42 U.S.C. § 1983, an application to proceed *in forma pauperis*, and a motion to excuse lack of financial certificate. (ECF Nos. 1-1, 1, and 1-3). Plaintiff's application to proceed *in forma pauperis* is incomplete.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$400 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period**. If Plaintiff has not been at the facility a full six-month period, Plaintiff must still submit an inmate account statement for the dates he has been present at the facility.

1 Plaintiff has not submitted a financial certificate or an inmate account statement
2 with his application to proceed *in forma pauperis*. Accordingly, the Court denies Plaintiff's
3 application to proceed *in forma pauperis* (ECF No. 1) without prejudice because the
4 application is incomplete.

5 As previously stated, under Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-
6 2, Plaintiff must complete an application to proceed *in forma pauperis* and attach both a
7 properly executed financial certificate and an inmate account statement for the previous
8 six-month period. Therefore, Plaintiff's motion to excuse lack of financial certificate (ECF
9 No. 1-3) is denied. If Plaintiff has difficulty obtaining both a financial certificate and an
10 inmate account statement from prison officials, Plaintiff shall file an affidavit in this case
11 detailing when he requested both documents, who he spoke to about the status of both
12 documents, who he followed up with after he did not receive both documents, and their
13 responses. Therefore, any affidavit provided by Plaintiff must document his efforts with
14 regard to both a financial certificate and an inmate account statement, not merely a
15 financial certificate.

16 In other words, if Plaintiff is unable to acquire the necessary documents from prison
17 officials, after making efforts to do so following receipt of this order, he must provide the
18 Court with an affidavit that demonstrates that he has done all that he could to acquire
19 both a financial certificate and an inmate account statement by the Court's deadline.
20 Plaintiff's affidavit should include dates of his requests, dates of his follow-up requests,
21 names of the prison officials that he spoke to about the matter, and their responses. If
22 Plaintiff's affidavit demonstrates that he has done all that was possible to acquire both a
23 financial certificate and an inmate account statement, the Court will consider his
24 application to proceed *in forma pauperis* complete.¹

25 Plaintiff should not file multiple letters or objections regarding these requirements
26

27 ¹ Plaintiff must still submit the first three pages of the application to proceed *in*
28 *forma pauperis* on this Court's approved form with his affidavit. If Plaintiff does not submit
the first three pages of the application to proceed *in forma pauperis* with the affidavit, the
Court will dismiss the case without prejudice for Plaintiff to open a new case when he is
able to acquire the required documents.

1 as this imposes an unnecessary administrative burden on the Court and delays the ability
2 of the Court to address substantive issues in cases. Plaintiff should simply file one
3 affidavit.

4 The Court will grant Plaintiff a **one-time extension** until on or before **September**
5 **21, 2020**, to file either a fully complete application to proceed *in forma pauperis* containing
6 all three of the required documents or, alternatively, the first three pages of the application
7 to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both
8 a financial certificate and an inmate account statement from prison officials. Absent
9 unusual circumstances, the Court will not grant any further extensions of time. If Plaintiff
10 is unable to file either a fully complete application to proceed *in forma pauperis* with all
11 three required documents or, alternatively, the first three pages of the application to
12 proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both a
13 financial certificate and an inmate account statement from prison officials on or before
14 **September 21, 2020**, the Court will dismiss this case without prejudice for Plaintiff to file
15 a new case with the Court when Plaintiff is able to either acquire all three of the documents
16 needed to file a fully complete application to proceed *in forma pauperis* or, alternatively,
17 the first three pages of the application to proceed *in forma pauperis* and an affidavit
18 detailing the efforts he took to acquire both a financial certificate and an inmate account
19 statement from prison officials.

20 A dismissal without prejudice means Plaintiff does not give up the right to refile the
21 case with the Court, under a new case number, when Plaintiff has either all three
22 documents needed to submit with the application to proceed *in forma pauperis* or,
23 alternatively, the first three pages of the application to proceed *in forma pauperis* and an
24 affidavit detailing the efforts he took to acquire both a financial certificate and an inmate
25 account statement from prison officials. Plaintiff may also choose not to file an application
26 to proceed *in forma pauperis* and instead pay the full filing fee of \$400 on or before
27 **September 21, 2020** to proceed with this case.

28 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court

will not file the complaint unless and until Plaintiff timely files either a fully complete application to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages of the application to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both a financial certificate and an inmate account statement from prison officials, or pays the full \$400 filing fee.

II. CONCLUSION

For the foregoing reasons, IT IS ORDERED that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is denied without prejudice to file either a new and fully complete application to proceed *in forma pauperis* with all three documents or, alternatively, the first three pages of the application to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both a financial certificate and an inmate account statement from prison officials.

IT IS FURTHER ORDERED that Plaintiff's motion to excuse lack of financial certificate (ECF No. 1-3) is denied.

IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the approved form application to proceed *in forma pauperis* by an inmate, as well as the document entitled information and instructions for filing an *in forma pauperis* application.

IT IS FURTHER ORDERED that on or before **September 21, 2020**, Plaintiff will either pay the full \$400 filing fee for a civil action (which includes the \$350 filing fee and the \$50 administrative fee) or file with the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period**. If Plaintiff has not been at the facility a full six-month period, Plaintiff must still submit an inmate account statement for the dates he has been present

1 at the facility.

2 Alternatively, Plaintiff will file with the Court the first three pages of the application
3 to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both
4 a financial certificate and an inmate account statement from prison officials.

5 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
6 application to proceed *in forma pauperis* with all three documents or, alternatively, the
7 first three pages of the application to proceed *in forma pauperis* and an affidavit detailing
8 the efforts he took to acquire both a financial certificate and an inmate account statement
9 from prison officials, or pay the full \$400 filing fee for a civil action on or before **September**
10 **21, 2020**, the Court will dismiss this action without prejudice for Plaintiff to refile the case
11 with the Court, under a new case number, when Plaintiff has all three documents needed
12 to file a complete application to proceed *in forma pauperis*.

13 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
14 (ECF No.1-1) but will not file it at this time.

15 DATED: July 21, 2020

16 
17 UNITED STATES MAGISTRATE JUDGE